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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

WAYNE LUM, an individual,

Plaintiff,

vs.

SCITOR CORPORATION, a Delaware
Corporation, and DOES 1-50,

Defendants.

No. C 09-05828 JF

**DEFENDANT'S REPLY TO PLAINTIFF'S
OPPOSITION TO DEFENDANT'S
MOTION FOR CHANGE OF VENUE**

Date: March 26, 2010
Time: 9:00 a.m.
Dept.: Courtroom 3, 5th Floor
Judge: Hon. Jeremy Fogel

**A. Lum Does Not Deny That His Termination Was Precipitated By The
Decisions And Actions Of Government Officials And Scitor Managers Who
Are All Located In Virginia.**

Plaintiff Wayne Lum admits three key facts: (1) "Lum had a security clearance from 1983 until 2009;" (2) "[t]he government required Lum to take a polygraph test to renew his security clearance;" and (3) "[w]hen Lum did not take the polygraph, the government revoked his security clearance." Plaintiff's Opposition ("Opposition"), p. 2. In admitting these facts, Lum acknowledges the key facts underlying Scitor's motion for change of venue – *i.e.*, that this case arises from Scitor's termination of Lum after officials of the United States government revoked Lum's security clearance following his refusal to complete a polygraph examination. Lum does not dispute that all of those government officials are located in Northern Virginia, nor does he dispute that the government required him to maintain his security clearance as a condition for

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1 remaining employed with Scitor. Lum does not dispute that all of the Scitor and government
 2 witnesses involved with the security clearance requirements and decisions on Lum's personal
 3 security clearance issues are located in Virginia. He does not dispute that all of the Scitor
 4 managers involved in the termination decision are located in Virginia. Consequently, Lum
 5 acknowledges that all of the key witnesses who will testify about the reasons and process for his
 6 termination are in Virginia.

7 Lum's attempt to focus the Court's attention on the fact that he is a lifelong California
 8 resident and that his therapist and day-to-day co-workers are in California is unavailing. Where
 9 Lum has lived is irrelevant to this case. Likewise, his therapist's assessments and opinions are
 10 immaterial given that he plainly failed to meet an essential qualification for his job – maintaining
 11 his security clearance. The key witnesses on the security clearance qualification issue are the
 12 government officials and Scitor managers in Virginia. Finally, the presence of Lum's co-workers
 13 in California also is irrelevant, as Lum's job performance is not at issue and none of those
 14 witnesses would have any testimony that is relevant to the polygraph examination issues and
 15 security clearance revocation that led to Lum's termination. By attempting to place these
 16 witnesses in the case, Lum seeks to obscure the centrality of the witnesses who are in Virginia.

17 **B. Lum's Selection Of A California Forum Is Not Entitled To Deference**
 18 **Because The Facts Giving Rise To His Claim Did Not Arise There.**

19 Lum's contention that "all of the facts giving rise to this employment disability
 20 discrimination case occurred in the Northern District" (Opposition, pp. 3-4) erroneously focuses
 21 on facts that are inoperative and marginal to his claims. The only reason that Lum lost his job is
 22 that he refused to submit to a polygraph examination and thereby lost his security clearance,
 23 which was a government-specified essential qualification for his job. All of the witnesses and
 24 documents with information concerning that set of issues are located in Virginia. The fact that
 25 Lum lived, worked, and allegedly received treatment for his alleged disability in California does
 26 not entitle his forum selection to deference, because Scitor has shown that the overwhelming
 27 weight of the relevant evidence is located in Virginia. Further, under Fed. R. Civ. P. 45(a)(2)(A)
 28 and (b)(2), the only way that Scitor can be assured of compelling the testimony of key third-party

1 government witnesses is if the case is tried in Virginia. Scitor has, to use the standard cited by
 2 Lum, made "a strong showing of inconvenience to warrant upsetting the plaintiff's choice of
 3 forum." *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986).

4 **C. This Court Is Not A More Convenient Forum.**

5 While Lum argues that litigating in Virginia would be "extremely burdensome" for him
 6 (Opposition, p. 4), he ignores the substantial inconvenience and cost to every other material
 7 witness – and to the public because of the centrality of government witnesses in this case – that
 8 will occur if this case is not transferred. The considerably greater cost associated with flying
 9 multiple witnesses from Virginia to California further weighs against Lum's argument that
 10 litigating in Virginia would be "extremely burdensome." Finally, the fact that Lum's claims
 11 would be decided much sooner in the Eastern District of Virginia would add to the convenience
 12 of Lum, Scitor, and all others concerned.¹ See Opposition, p. 3 (noting that "the relative court
 13 congestion and time of trial in each forum" is relevant in deciding a motion to transfer).²

14 **D. Scitor Has Sufficiently Identified The Witnesses With Relevant Testimony.**

15 Scitor has provided ample testamentary evidence (in the form of the Declarations
 16 attached to Scitor's Motion) establishing the importance of government contract requirements,
 17 NRO directives, and Virginia-based NRO and Scitor personnel to this case. Many of the Scitor
 18 personnel have been specifically named and/or have submitted declarations in support of Scitor's
 19 Motion. Although Scitor has not named specific NRO personnel because of NRO-imposed
 20 constraints on the public release of such information, Scitor's counsel will make every effort to
 21 provide the names of specific NRO witnesses should this Court so direct. Contrary to Lum's
 22 assertions, Scitor has provided detailed information about the issues on which NRO personnel
 23 will testify and has established that those personnel reside in Virginia. See Declaration of
 24 Donald Fisher, filed in support of Scitor's Motion.

25
 26
 27 ¹ The Eastern District of Virginia, known nationally as the "Rocket Docket," would likely provide a trial of
 Lum's claims by the end of 2010 based on that Court's typical scheduling practices.

28 ² Lum's claim of "limited financial resources" in support of his argument is suspect. On information and
 belief, Lum owns and operates a successful badminton club that has been the subject of press reports.

E. Lum Erroneously Understates The Importance Of NRO Requirements, Policy, And Personnel To This Case.

Given that government requirements made holding a security clearance an essential qualification for Lum's job, and that he became unqualified for his job once he lost his clearance, the specifics of Lum's alleged disability and his alleged treatment are not material to this case. All that matters is that Scitor, faced with a government mandate founded on national security concerns, had to abide by that mandate. Because the NRO's directive to de-brief Lum was the sole precipitating cause of his termination, the NRO's witnesses and other evidence are critical to this case. It will serve justice, efficiency, and the public interest to have this case heard in the location where the NRO witnesses and their evidence can most readily and most assuredly be obtained.

F. Conclusion.

For all of the reasons stated above, and in Scitor's motion and the supporting declarations, Scitor respectfully submits that the motion for change of venue should be granted and that this action should be transferred to the United States District Court for the Eastern District of Virginia, Alexandria Division.

Respectfully submitted,

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DATE: March 12, 2010

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